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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
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10 VERNELL WHITE,

11 Petitioner,

12 v.

13 ROB ST ANDRE, Warden,

14 Respondent.  
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Case No. 8:24-cv-02678-SVW-SSC

**ORDER DISMISSING ACTION  
WITHOUT PREJUDICE**

17 On December 9, 2024, *pro se* Petitioner Vernell White filed this  
18 habeas action pursuant to 28 U.S.C. § 2254. (ECF 1.) On February 14,  
19 2025, Respondent filed a motion to dismiss the petition, arguing, in  
20 part, that the petition should be dismissed pursuant to the abstention  
21 rule of *Younger v. Harris*, 401 U.S. 37, 45–46 (1971) because Petitioner  
22 has a pending state appeal. (ECF 8.) On April 2, 2025, Petitioner filed  
23 a request to withdraw the petition without prejudice. (ECF 11.)

24 Under Rule 41 of the Federal Rules of Civil Procedure, a petitioner  
25 may voluntarily dismiss a case without a court order before the  
26 respondent has served an answer or motion for summary judgment.  
27 Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal under Rule  
28 41(a)(1)(A)(i) remains available where, as here, the respondent has filed

1 only a motion to dismiss the petition. *See Murray v. Pollard*, No. CV  
2 20-8775-RGK (JEM), 2021 WL 5969306, at \*17 (C.D. Cal. Nov. 8, 2021)  
3 (voluntary dismissal under Rule 41(a)(1), rather than court-ordered  
4 dismissal under Rule 41(a)(2), applies in § 2254 action where  
5 respondent has filed a motion to dismiss but not an answer or motion  
6 for summary judgment), *report and recommendation adopted*, No. CV  
7 20-8775 RGK (JEM), 2021 WL 5968409 (C.D. Cal. Dec. 16, 2021);  
8 *Fulcher v. Hatton*, No. 16cv2041-BAS-BGS, 2017 WL 663564, at \*1  
9 (S.D. Cal. Jan. 31, 2017) (same), *report and recommendation adopted*,  
10 No. 16-cv-02041-BAS-BGS, 2017 WL 661596 (S.D. Cal. Feb. 17, 2017).  
11 Unless a petitioner requests otherwise, or has previously dismissed the  
12 same claim(s), a voluntary dismissal under Rule 41(a)(1)(A)(i) shall be  
13 without prejudice. Fed. R. Civ. P. 41(a)(1)(B).

14 Because Respondent has not filed an answer or motion for  
15 summary judgment, the Court construes Petitioner's request to  
16 withdraw the petition as a notice of voluntary dismissal without  
17 prejudice pursuant to Rule 41(a)(1)(A)(i). Accordingly, as Petitioner  
18 requests dismissal of this action without prejudice, and this appears to  
19 be the first time that Petitioner has dismissed these claims, this action  
20 is dismissed without prejudice.<sup>1</sup> *Id.*

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22 DATED: April 24, 2025

  
HONORABLE STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Even if, in light of Respondent's motion to dismiss, Petitioner must obtain a Court order pursuant to Rule 41(a)(2) to dismiss this action, dismissal is warranted here and such dismissal shall be without prejudice. *See* Fed. R. Civ. P. 41(a)(2) ("Unless the order states otherwise, a dismissal under this [subsection] is without prejudice.").